

PROPOSED FINDINGS OF FACT

I. THE STANDARD COMPARATIVE RENEWAL ISSUE

A. INTRODUCTION

6. The *HDO* designated the standard comparative issue for hearing in this proceeding. *HDO* at 2, ¶3. It did not specify any particular factors to be considered in connection with that issue. The *HDO* cited the *First Report and Order - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 16004-06 (1998), *reconsideration granted in part and denied in part*, FCC 99-74, released April 20, 1999 ("*First Report and Order*") as the basis for the issue.

7. In the *First Report and Order*, the Commission considered the matter of resolving comparative renewal proceedings in the wake of *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993) ("*Bechtel II*"). In *Bechtel II* the Court barred the Commission from relying on the "integration" criterion in assessing the comparative merits of competing applicants^{3/}; however, the *Bechtel II* Court did not dictate any substitute criteria, instead

^{3/} The "integration" criterion originated more than 50 years ago. At its inception, "integration" afforded a weak preference in comparative cases. *See, e.g., Homer Rodeheaver*, 12 FCC 301, 307 (1947) ("other factors being equal, the Commission is inclined to prefer an applicant who intends to manage and operate the proposed station personally rather than to entrust its operation to employees"). "Integration" assumed greater significance in 1965, when the Commission declared it "important per se" for station owners to participate in day-to-day station management. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC2d 393, 394 (1965). The criterion was based on a prediction that such owner-management would be more likely to result in programming responsive to community needs. However, the Commission never substantiated that prediction and, in *Bechtel II*, the Court determined that the integration criterion was impermissibly arbitrary and capricious.

leaving the Commission to develop a non-arbitrary and non-capricious system of comparative evaluation.

8. In the *First Report and Order* the Commission declined to adopt any specific new comparative mechanism to govern the limited number of pending comparative renewal proceedings. Instead, the Commission stated that under the "generally phrased standard comparative issue" in comparative renewal proceedings, the competing applicants should "present the factors and evidence they believe most appropriate" for consideration, *First Report and Order*, 13 FCC Rcd at 16006, ¶213. According to the Commission, the standard comparative analysis should be decided "as nearly as possible according to the standards in effect prior to *Bechtel II*", *id.* at ¶214.

9. Pursuant to the Commission's direction in the *First Report and Order*, the Presiding Judge ordered the parties to submit briefs addressing, *inter alia*, the evidentiary criteria for the adjudication of the standard comparative issue. *Order*, FCC 99M-42, released July 15, 1999. After consideration of the submissions of all the parties, the Presiding Judge concluded that, in addition to factors relating to renewal expectancy (discussed below), the following factors could be considered under the standard comparative issue:

- (a) Diversification of media ownership;
- (b) Efficient use of frequency (comparative signal coverage); and
- (c) Local residence, civic involvement and broadcast experience to the extent that they reflect on the incumbent renewal applicant's historical performance.

Memorandum Opinion and Order, FCC 99M-47, released August 9, 1999, at ¶¶3-7.

10. With particular attention to the last-listed factor (*i.e.*, local residence, civic involvement and broadcast experience), in *Bechtel II* the Court rejected the Commission's reliance on "integration" largely because of the essentially predictive nature of that criterion. The Court was troubled by the fact that the integration criterion entailed purely predictive judgments of an applicant's likely future performance based on such considerations as local residence, civic involvement and broadcast experience. Here the Presiding Judge determined that such factors may properly be considered where they are "not used to predict the future." *Memorandum Opinion and Order*, FCC 99M-47, released August 9, 1999, at ¶6.

11. Thus, mere local residence, civic involvement or broadcast experience are not in and of themselves relevant here. But the extent to which any local residence, civic involvement or broadcast experience attributable to the incumbent renewal applicant actually did (or did not) historically result in particular programming performance during the license term through the influence of increased awareness of community needs *may be* relevant to the standard comparative issue.

12. The "renewal expectancy" component of the comparative renewal issue was *not* changed in the *First Report and Order*. There the Commission admonished that the ultimate comparison of applicants should "adher[e] to the criteria for evaluating the renewal applicant's performance during the license term to determine its eligibility for, and the comparative significance of, any renewal expectancy", 13 FCC Rcd at 16006, ¶214. The "renewal expectancy" criteria to be adhered to were announced in, *e.g.*, *Central Florida Enterprises, Inc. v. FCC* ("*Central Florida*"), 683 F.2d 503 (D.C. Cir. 1982),

cert. denied, 460 U.S. 1084 (1983), *Radio Station WABZ, Inc.*, 90 FCC2d 818 (1982), *aff'd sub nom. Victor Broadcasting, Inc. v. FCC*, 722 F.2d 756 (D.C. Cir. 1983). See *First Report and Order*, 13 FCC Rcd at 16005, n.266.

B. DIVERSIFICATION OF MEDIA OWNERSHIP

(1) ADAMS

13. Adams is a for-profit corporation organized in November, 1993. Adams neither holds nor plans to hold any other interest in any medium of mass communication. None of the officers, directors or shareholders of Adams holds, or plans to hold, any cognizable interest in any medium of mass communication other than the Reading authorization proposed in Adams's application. Adams Exh. 1. ^{4/}

(2) RBI

14. RBI holds the license of Station WTVE(TV), as well as auxiliary radio authorizations held in connection with Station WTVE(TV). RBI Exh. 4.

15. Micheal L. Parker, President, Director and dominant shareholder of RBI, is

^{4/} On June 28, 1999, A. R. Umans, an officer, director and 8.7% shareholder of Adams, acquired a 4.04% interest in JMP Media, L.L.C. ("JMP"), which is the licensee of Stations WPBG-FM and WMBD(AM), Peoria, Illinois. Adams Exh. 1. Mr. Umans is not an officer or director of JMP, and he is not involved in the management or control of JMP's stations. *id.* The extent of Mr. Umans's interest in JMP is therefore not cognizable under the Commission's Rules. See Section 73.3555, Note 2(a). In any event, Mr. Umans has committed unconditionally to the divestiture of his interest in JMP in no event later than the commencement of operation, by Adams, of its proposed Reading operation pursuant to program test authority. Adams Exh. 1. Notice of Mr. Umans's divestiture commitment was submitted to the Presiding Judge on the date established by the Presiding Judge for the submission of diversification statements.

an officer, director and sole shareholder of Desert 31 Television, Inc., which has owned Station KVMD(TV), Twentynine Palms, California, since 1992. Mr. Parker is also an officer, director and sole shareholder of Two If By Sea Broadcasting Corporation ("TIBS"). TIBS is the licensee, since 1992, of International Broadcast Station KAIJ, formerly KCBI, Dallas, Texas, as well as the operator, since 1997, of Station WHCT(TV), Hartford, Connecticut, pursuant to a time brokerage agreement. RBI Exh. 4. Mr. Parker has made no pledge, timely or otherwise, to divest himself of any of these other broadcast interests.

C. EFFICIENT USE OF FREQUENCY

16. According to the Joint Engineering Statement, RBI Exh. 48, the areas and populations which are presently served by Station WTVE(TV) and which would be served by Adams's proposed operation are as follows:

	Population	Land Area
WTVE Grade B	3,119,889	14,128 sq. km.
Adams Grade B	4,260,920	14,942 sq. km.

RBI Exh. 48, p. 3. The areas and populations encompassed in each of these two Grade B service areas are neither unserved nor underserved, since all areas and populations to be served by either party already receive more than five services. RBI Exh. 48.

17. The Joint Engineering Exhibit shows that RBI holds a construction permit (File No. BMPCT-940811KL) authorizing modification of the facilities of Station WTVE(TV) in certain respects. However, RBI has: (a) supposedly been contemplating some relocation of its transmitter site for more than a decade, *see, e.g.*,

Adams Exh. 13, p. 2 ^{5/}; (b) held a permit to do so since 1990 (see BMPCT-19870327KI, granted May 4, 1990); (c) held the permit specifying the facilities described in the Joint Engineering Exhibit since 1995; and (d) failed to modify its facilities as specified in the outstanding permit.

18. On April 24, 1999, RBI filed a letter with the Commission requesting a waiver of the Commission's 1998 decision in *Streamlining of Mass Media Applications, Rules and Processes* ("*Streamlining of Applications*"), 13 FCC Rcd 23056, 14 CR 351 (1998). RBI Exh. 12, Tab B. In *Streamlining of Applications*, the Commission announced that no construction permit, however modified, would be extended if that permit had theretofore had an uninterrupted three-year construction period. 13 FCC Rcd at 23090-23093. RBI's permit had been outstanding since 1990. So by 1999 RBI had had substantially more than three uninterrupted years in which to construct, and it had failed to do so. Under the Commission's rules, the permit would therefore not be extended. Accordingly, RBI sought a waiver. RBI Exh. 12, Tab B. No evidence in the record indicates that RBI's waiver request was granted.

19. Mr. Parker was examined about the status of RBI's construction permit,

^{5/} Adams Exhibit 13 consists of the minutes of meetings of the RBI shareholders during the license term. The minute cited in the text above relates to a meeting held on August 1, 1989 at which Mr. Parker was introduced to the RBI shareholders. According to that minute, Mr. Parker's initial presentation to the shareholders included discussion of a possible relocation of the station's transmitter site. Similar discussions appear in other minutes throughout the license term. Adams Exh. 13 at, e.g., 26-30 (June, 1991); 50 (October, 1991); 128 (February, 1994).

which was most recently extended in 1995. Tr. 816-822, 854-873. ^{6/} He testified that a zoning dispute with Earl Township, where the transmitter site is located, had prevented construction. Tr. 818-822. According to Mr. Parker, Earl Township had expressly advised RBI in an oral communication and in two separate letters (the "Earl Township Letters") that RBI, as a broadcaster, was a "public utility" within the meaning of certain land use regulations and that, because of that status, RBI would be deemed exempt from those regulations so that RBI itself could construct and own a television broadcasting tower. 818-819, 858-860, 872-873. ^{7/} Mr. Parker stated that the Earl Township Letters were based on an oral opinion provided with respect to an earlier transmitter site proposed by RBI. Tr. 818. Consequently, according to Mr. Parker, RBI was confident of its ability to implement its construction permit. Tr. 818-819.

20. Mr. Parker's confidence in the likelihood that RBI would ultimately be able to relocate its station was based primarily on the two Earl Township Letters. Tr. 818. While Mr. Parker testified in some detail about the supposed content of those letters, he did not provide copies of those letters. The Earl Township Letters described by

^{6/} Testimony about the status of the construction permit was appropriate in order to develop a record concerning the likelihood that the facilities specified in the permit would actually be built. *See, e.g.*, RBI's Prehearing Brief on Scope of Issues, filed July 22, 1999, at 7 ("a party should not be entitled to claim a comparative coverage benefit if separate evidence indicates that the applicant's proposed facilities won't be built as proposed").

^{7/} This was not the first time that an RBI official had made this claim to the Commission. In the April, 1999, letter described in Paragraph 18, above, RBI Vice President and Director McCracken stated, *inter alia*, that Earl Township had, "as far back as 1991", taken "the position that -- by virtue of its broadcasting operations -- RBI was a public utility under Pennsylvania law". *See* RBI Exh. 12, Tab B, (unnumbered) p. 2. Mr. McCracken did not quote from or attach copies of the Earl Township Letters.

Mr. Parker were offered into evidence by Adams. *See* Adams Exh. 41, pp. 2-4. ^{8/}

Contrary to Mr. Parker's testimony, those letters did *not* state that RBI, as a broadcaster, was a "public utility" exempt from local land use regulations. Adams Exh. 41. Nor, contrary to Mr. Parker's testimony, did those letters reflect any understanding by Earl Township that RBI was to be the builder and owner of a tower. *Id.* Moreover, ending the cross-examination with respect to this subject, Mr. Parker acknowledged that the initial Township opinion on which the two Earl Township Letters were based assumed the proposed construction of a "cellular telephone tower". Tr. 872.

21. During his testimony on January 11, 2000, Mr. Parker testified that the hearing on RBI's dispute with Earl Township had been completed and that he anticipated a decision "momentarily" and he "would love to report . . . we were able to go ahead and build". Tr. 821-822.

22. On January 27, 2000 -- barely two weeks after Mr. Parker testified -- Judge Stallone of the Court of Common Pleas in Berks County issued a decision adverse to RBI. During cross-examination of Mr. Parker in June, 2000, Adams presented a copy of Judge

^{8/} Adams Exhibit 41 is a document entitled "Stipulated Facts" which was obtained from the docket of the Court of Common Pleas in Berks County, Pennsylvania. Local counsel for RBI subscribed to the "Stipulated Facts" in August, 1999, indicating that RBI believed the information in the "Stipulated Facts" to be accurate. The "Stipulated Facts" include transcriptions of the two letters from Earl Township mentioned during Mr. Parker's testimony in this proceeding. When shown the "Stipulated Facts", Mr. Parker said that the letters transcribed therein might not include the complete texts of the letters in question, Tr. 865. He claimed that, without the "entire letter", Tr. 866, he would be unable to demonstrate to the Court where exactly in those letters Earl Township had advised RBI that RBI was a "public utility" exempt from certain land use procedures. He was then shown copies of the two original letters, the texts of which are fully and accurately reflected in the Stipulated Facts. Tr. 866-867. The documents speak for themselves.

Stallone's January 27, 2000 decision to Mr. Parker, who acknowledged that such a decision had been issued in January, 2000. However, he stated that the matter had been directed to mediation subsequent to the issuance of that decision. Tr. 1905. Since that testimony Adams has been advised that the mediation was unsuccessful and has been terminated, and that RBI is pursuing an appeal of the January 27, 2000 decision.^{9/} To date RBI has not advised the Presiding Judge of the failure of the mediation process or the continued pursuit of RBI's appeal.

^{9/} The information obtained by Adams is not a matter of record evidence. Adams understands that the mediation process is treated confidentially, and that no documentary record concerning the initiation or termination of the mediation is available. Thus, Adams is unable to obtain and submit such documentation for purposes of official notice. In the event that Adams's understanding concerning the termination of the mediation is incorrect, RBI has the opportunity, in its Reply Findings, to advise the Presiding Judge of the actual status of the zoning mediation if that status differs from Adams's information. RBI may also wish to explain its apparent reluctance to keep the Court apprised of developments concerning the zoning litigation, particularly in view of the Presiding Judge's admonition about advising the Court "[i]f something significant happens, even if it's partially significant." Tr. 1907.

D. LOCAL RESIDENCE, CIVIC INVOLVEMENT AND BROADCAST EXPERIENCE TO THE EXTENT THAT THEY REFLECT ON THE INCUMBENT RENEWAL APPLICANT'S HISTORICAL PERFORMANCE.

(1) ADAMS

23. The officers, directors and shareholders of Adams are:

Name	Official Position	Percentage Ownership
Robert L. Haag	President, Director	18.5%
Howard N. Gilbert	Vice President, Secretary, Director	12.1%
Robert L. Haag 1994 Limited Partnership	--	23.1%
Howard N. Gilbert 1994 Family Limited Partnership	--	5.8%
Wayne J. Fickinger	Vice President, Treasurer, Director	11.6%
Manfred Steinfeld	Director	8.7%
A. R. Umans	Vice President, Director	8.7%
Calvin I. Leibovitz	--	1.7%
Talmadge Hill	--	3.4%
Elinor Woron	--	0.6%
Milton Podolsky	--	5.8%

All of Adams's principals are United States citizens. Adams Exhibit 1.

24. While none of them has ever resided in Reading or been civically active in

Reading, Adams's officers and directors are all individuals of personal and professional accomplishment who have engaged in a wide range of public service activities. Adams Exh. 1.

25. In addition to serving on numerous boards of directors of substantial corporations, including the Alberto-Culver Company, which he co-founded, Mr. Haag has been a director of the Skokie Valley Hospital. *Id.* at 5-6. He was named the Man of the Year by the American-Israel Chamber of Commerce in 1976, and served as President of that organization from 1977-1978. *Id.*

26. Mr. Fickinger, former President of the J. Walter Thompson Company, Tr. 2427, was also a Vice Chairman of Mundelein College and on the board of Columbia College. Tr. 2428. He has been on the board of the Chicago Convention and Visitor's Bureau and on the steering committee of El Valor, an Hispanic organization. *Id.*

27. Mr. Gilbert, an attorney in private practice for nearly 50 years and a director of a number of corporations, has been the Chairman of the Board and a director of the Mount Sinai Medical Center of Chicago for more than 30 years. Adams Exh. 1 at 3-4. He is also a member of the Visiting Committee of the College of the University of Chicago, and has served as a director of several other public and charitable organizations. *Id.* He served as a member of the transition committee on health care during Mayor Washington's first term as mayor of Chicago. *Id.*

28. Mr. Umans was President and CEO of RHC/Spacemaster Corp., a public corporation. *Id.* at 9-10. He has also served on the boards of numerous other corporations. *Id.* He is on the board of the Mount Sinai Hospital Medical Center and

Sinai Health Systems; he served as Chairman of the Board of the latter. *Id.*

29. Mr. Steinfeld is a co-founder of Shelby-Williams Industries, Inc. *Id.* at 7-8. He is a life member of the Board of Trustees of Roosevelt University and a member of the Board of Advisors of the School of Human Ecology at the University of Tennessee, Knoxville. *Id.* He has also been active in numerous other civic and charitable activities. *Id.* Mr. Steinfeld is a decorated veteran of both World War II and Korea. *Id.*

(2) **RBI**

(a) ***LOCAL RESIDENCE***

30. RBI Exhibit 2 identifies RBI's current shareholders who have resided and presently reside within the predicted Grade B contour of Station WTVE(TV). The RBI shareholders so identified are:

Irvin Cohen
Edward C. and Noni J. Fischer
Frank D. McCracken
Albert R. Boscov
Ben F. Bowers
John R. and Jill L. Bower
Harry Brueckman
Faye H. Clymer, Trustee
Robert H. Clymer, Trustee
Robert A. Denby
Dolores Gallen
John H. Gallen
Bernard Gerber
David Hyman
Carol Anne Kasko-MacCallum
Jack A. Linton
John Linton
Nelson H. and Patricia Long
Roger N. and L. Carole Longenecker
Barbara MacCallum

David E. and Barbara W. Mann, Sr.
 Catherine Z. Morrow
 Richard M. Palmer, Jr.
 Micheal L. Parker ^{10/}
 Sergio V. and Penelope P. Proserpi
 Uriel and Kelly Rendon
 Jose Rivera
 Leah Beth Rotenberg
 Jonathan Peter Rotenberg
 Adolpho E. Rodriguez
 Larry A. and Alison A. Rotenberg
 David A. Rotenberg
 Donald E. and Mary Lu Stoudt, TEI
 Ralph Tietbohl
 Joanne D. van Roden
 Patricia J. Verbinski

31. RBI Exhibit 2 does **not** identify which of the shareholders listed therein owned any interest in RBI during the 1989-1994 license term. Review of Ownership Reports submitted to the Commission by RBI during the period 1989-1994 indicates that, of the RBI shareholders listed above, the following persons listed in RBI Exhibit 2 were **not** shareholders during the 1989-1994 license term: Frank D. McCracken, John Linton, Nelson H. and Patricia Long, Uriel and Kelly Rendon, Jose Rivera, Leah Beth Rotenberg, Jonathan Peter Rotenberg, David A. Rotenberg. RBI Exh. 11.

^{10/} While Mr. Parker is included in the list of principals who "have resided and presently reside" within the station's service area, RBI Exhibit 2 indicates that Mr. Parker resided in the Reading area at most on a very part-time basis through December, 1996. The record contains no timely commitment by Mr. Parker to resume any degree of residence within the service area. Moreover, contrary to RBI Exhibit 2, RBI's Ownership Reports during the 1989-1994 license term always identified Mr. Parker as a resident of the State of Washington. See RBI Exh. 11; see also Tr. 1668, 1701 (WTVE's Program Director/Station Manager/Sales Manager Daniel Bendetti testifies that Mr. Parker was "out of town a lot", "quite often", and his visits to the station were "usually . . . short").

(b) *CIVIC ACTIVITIES*

32. According to RBI Exhibit 2, 11 current RBI shareholders have been involved in various civic activities. The shareholders so listed ("Civically Active RBI Shareholders") are: Jack Linton, David Mann, Barbara Mann, Catherine Z. Morrow, Robert H. Clymer, Jose Rivera, Ralph H. Tietbohl, Roger N. Longenecker, Micheal L. Parker, Irvin Cohen and Frank D. McCracken. RBI Exh. 2, pp. 5-7. RBI Exhibit 2 does *not* provide sufficient information to determine: (a) that all of the Civically Active RBI Shareholders were RBI shareholders during the 1989-1994 license term ^{11/}; or (b) that the civic activities ascribed to the Civically Active RBI Shareholders occurred during the 1989-1994 license term ^{12/}; or (c) that those civic activities occurred within or related to any community or organization within the Grade B contour of Station WTVE. ^{13/}

^{11/} As noted above, according to RBI's Ownership Reports during the 1989-1994 license term (included in RBI Exh. 11), Messrs. McCracken and Rivera were *not* RBI shareholders during the license term.

^{12/} As a threshold matter, the dates of the civic activities are said to be only "best estimates", RBI Exh. 2, p. 5, so there is no assurance at all that any of the activities actually occurred during the license term. Moreover, none of the activities listed in RBI Exhibit 2 for Ms. Morrow or Dr. Clymer reflects *any* dates during which those activities occurred. Similarly, two of the activities listed for Dr. Tietbohl and three of the activities listed for Mr. Linton have no specific dates. All activities listed for Mr. Mann and at least six of the activities listed for Mr. Linton appear to have commenced after the end of the license term. Several of the activities listed for Mr. Cohen either ended before the license term or reflect no starting date, making it impossible to determine whether the activities occurred during the license term. And as indicated above, Messrs. Rivera and McCracken were not RBI shareholders during the relevant license term.

^{13/} Ms. Mann's involvement with the Advent Lutheran Church is not shown to relate to the station's service area. Mr. Longenecker's involvement with CONCERN relates to Fleetwood, Pennsylvania, which is not otherwise said to be within the Grade B contour of Station WTVE(TV). Mr. Cohen's involvement with the Jewish Community Foundation is
(continued...)

33. Of the Civically Active RBI Shareholders, the following are the activities which may be considered under the comparative issue here, *i.e.*, civic activities which were undertaken within the WTVE service area during the 1989-1994 license term by persons who were RBI shareholders during that license term:

RBI Shareholder during 1989-1994 license term	Civic Activity (including dates)
Jack Linton	Treasurer, Berks County Bar Association, 1970-1972 ^{14/} Chairperson, Tax Section, Berks County Bar Association, 1994-1995 ^{14/} President, Berks County Mental Health Association, 1968-1970 President, Reading Jewish Community Center, circa 1982 Treasurer, Reading Soccer, 1982-1984 President and Co-founder, Estate Planning Council of Berks County, circa 1972 ^{14/} Member, Berks County Mental Health Retardation Board (six years), 1980's President and Member, Board of Directors Berks County Chamber of Commerce (two years), 1970's Board of Directors, Reading Jewish Community Center Foundation, 1982-date

^{13/}(...continued)

not shown to relate to the station's service area. Again, as indicated above, Messrs. Rivera and McCracken were not RBI shareholders during the relevant license term.

^{14/} This activity may be a professional commitment rather than a civic commitment. This activity is included here in an abundance of caution.

Board of Trustees, Reading Rehabilitation Hospital, 1992-1998

Ralph H. Tietbohl Organizer of Group of Faculty M.D.s to form group of faculty doctors known as "Choice" to provide coverage for weekends and holidays to cover emergencies in our area, 1970-1998 ^{15/}

Micheal L. Parker Reading Chamber of Commerce, 1990-96 ^{16/}

RBI Exh. 2, pp. 5-7.

(c) **BROADCAST EXPERIENCE**

34. Only two RBI shareholders during the relevant license term, Micheal L. Parker and Jack Linton, had any broadcast experience. RBI Exh. 3. ^{17/} According to his

^{15/} This activity may be a professional commitment rather than a civic commitment. The geographical scope of the activity is also not stated with precision; however, the term "in our area" is interpreted to include the Reading area. This activity is included here in an abundance of caution.

^{16/} The precise nature and extent of Mr. Parker's involvement with the Reading Chamber of Commerce are not described in RBI Exhibit 2 or elsewhere in the record. This activity is included here in an abundance of caution.

^{17/} RBI Exhibit 3 also indicates that Frank D. McCracken has served in a full-time managerial capacity at Station WTVE(TV), and has produced a weekly program on the station, since 1996. However, Mr. McCracken was not an RBI shareholder during the license term, and the broadcast experience described occurred well after the close of the license term and the filing of Adams's application. Accordingly, no consideration can be given to the experience ascribed to Mr. McCracken. See, e.g., *Video 44*, 6 FCC Rcd 4948, 69 RR2d 975 (1991), *National Black Media Coalition v. FCC*, 775 F.2d 342, 350, 356 (D.C.Cir. 1985).

written testimony, Mr. Parker was a principal of a licensee of the following stations:

Station	City of License	Dates of Mr. Parker's Involvement
KTBY(TV)	Anchorage, AK	1982-1984 (approximate)
KWBB(TV)	San Francisco, CA	1986-1993 (approximate)
WHRC(TV)	Norwell, MA	1992-1997
KVMD(TV)	Twentynine Palms, CA	1992-present
KAIJ	Dallas, TX	1992-present

RBI Exh. 3, pp. 1-2. The evidence indicates that Mr. Parker's involvement with each of these stations occurred during the "construction and initial operation" of those stations. *Id.* However, the record is silent about the nature or extent of Mr. Parker's actual activities or experience with regard to any of the stations in question, including any involvement he might have had *after* the "construction and initial operation" stage. ^{18/}

35. RBI's written direct case exhibits proffered under the Standard Comparative Issue did not refer to Station KORC(TV), Anacortes, Washington, another station which Mr. Parker had constructed and initially operated. The record developed in the trial of the Phase II Issue establishes that, in connection with that station, Mr. Parker attempted to deceive the Commission by constructing, after the cancellation of the station's construction permit, a station with facilities dramatically at variance from those authorized. *See, e.g.*, Paragraphs 272-278, below.

36. Mr. Linton's broadcast-related experience, as distinct from his positions as shareholder, officer and director of RBI, consisted of the following:

^{18/} In fact, Station KTBY(TV) went into bankruptcy by 1985. Adams tendered for the record materials demonstrating that, but the Presiding Judge rejected those materials. *See* Tr. 729; *Memorandum Opinion and Order*, FCC 00M-27, released March 31, 2000.

- (a) House counsel for Bob Banner Productions, a television production company in New York City, from 1963 through 1966.
- (b) Part-time sports announcer for RBI in 1980.

RBI Exh. 3, p. 3. The record is silent about the nature or extent of Mr. Linton's activities in each of these positions.

(d) ***INFLUENCE OR EFFECT OF RBI SHAREHOLDERS ON
PROGRAMMING OF STATION WTVE(TV) DURING THE 1989-
1994 LICENSE TERM***

37. The record reflects that, at most, only three RBI shareholders had any seemingly active involvement, significant or insignificant, effective or ineffective, in programming Station WTVE(TV) during the license term: Messrs. Parker, Linton and Tietbohl.

(d1) ***Mr. Parker***

38. Pursuant to a Management Services Agreement ("MSA") initially entered into between RBI and Partel, Inc. ("Partel") in May, 1989 and still in effect to date, Mr. Parker -- for whom Partel was a corporate alter ego, Tr. 900 (Mr. Parker, Partel's 100% shareholder, states "I am Partel") -- was to provide "such managerial, operational, consulting, and other services" as Partel "may reasonably consider necessary in order to manage and operate" Station WTVE(TV). Adams Exh. 19, p. 3. The MSA also provided that Mr. Parker would be elected Executive Vice-President and Chief Operating Officer of RBI "with the full authority necessary to conduct the day-to-day operations of the Station". Adams Exh. 19, p. 4. Mr. Parker was therefore in a position to exert substantial influence over the station's programming from the very beginning of the relevant license term.

39. Asked whether he had any role in the ascertainment process, *i.e.*, the process by which Station WTVE(TV) determined the needs and interests of its audience, Mr. Parker responded in the affirmative. Tr. 825. He then provided the following description of that role:

Well, in terms of the overall authority to people under me, George Ma[t]miller, I would have to say I delegated to him the point position there. He had under him a Roger Tobias, Dan [B]endetti (phonetic), and Kim Bradley in various functions of that. But I would have to say that I have always tended to be, in whatever operation I am in, the guy that deals with, like, the Chamber of Commerce types. And the people at the station under me, if you will, have dealt with the community agencies like the Red Cross -- all of your various nonprofit agencies, most of which have their boards of directors at the chamber levels.

A lot of times you get a chamber guy who will come up to you or some business leader in the community and says, look, we are working on a United Way campaign, can you help us out with it. And then I would refer them to either George or one of the people under him, depending on who was present at whatever particular time. Mostly it would be to George Ma[t]miller, however, and have him assist in those areas.

Tr. 825. Thus, Mr. Parker delegated responsibilities in the ascertainment process, retaining for himself only the role as the "guy who deals with the Chamber of Commerce types". That role, as described by Mr. Parker, was essentially passive. That is, Mr. Parker waited for other Chamber participants to contact him, at which point he would refer them to others at the station. *Id.* And Mr. Parker did not work at all with any not-for-profit organizations. *Id.*

40. Asked if the results of the station's ascertainment efforts had ever been tabulated in a systematic way, Mr. Parker was uncertain and indicated again that he had delegated the ascertainment process to the station's staff but had given the staff no specific direction concerning any such tabulation. Tr. 829-831. Thus, rather than utilize any local

residence, civic activities and/or broadcast experience through active participation in any ascertainment effort, Mr. Parker instead delegated responsibility for that effort to others.

41. This was corroborated by Daniel Bendetti, the station's Program Director during the license term. Mr. Bendetti testified that Mr. Parker preferred not to be engaged in discussions with the station's staff "about public service" because, from Mr. Bendetti's observation, Mr. Parker "didn't want to be bothered with it." Tr. 1718-1719.

42. The record does contain a one-page document entitled "Community Ascertainment" which indicates some involvement by Mr. Parker in the station's ascertainment process. Adams Exh. 17, p. 271. This document was included among materials submitted by RBI to the Commission in March, 1993 to "reflect [the station's] commitment to serve the public in its community of license and service area." Adams Exh. 16, p. 1. Those materials also referred to RBI's efforts to "maintain a high level of community awareness for public service." Adams Exh. 16, p. 7.

43. The single page titled "Community Ascertainment" states that "[t]he following represents WTVE-TV 51's Community Ascertainment efforts for the period October 1-December 31, 1992". Adams Exh. 17, p. 271. The remainder of the page consists of brief descriptions of five meetings or conversations which Mr. Parker supposedly had with five separate individuals. Of the five individuals with whom Mr. Parker had spoken in those ascertainment efforts, three -- Frank McCracken, Jack Linton, and Judge Rose -- were principals of RBI, although their relationship to RBI was not indicated in any way in the "Community Ascertainment" descriptions submitted to the

Commission. ^{19/} It is difficult to perceive how local residence, civic activities and/or broadcast experience are reflected in Mr. Parker's "ascertainment efforts" which were merely chatting with three of his fellow RBI principals.

44. Mr. Parker was examined about the "Community Ascertainment" page. Tr. 832-847. He was unable to point to any programming other than several PSA's which might have been responsive in any way to the needs and interests noted on that page. *Id.*

45. Mr. Parker was asked why the station had chosen to respond to ascertained needs and issues through PSA's rather than longer-form programming. He testified that he was concerned about receiving complaints from viewers unhappy that home shopping programming had been preempted and expressed concern about the expenditure of station resources. Tr. 848-849. However, Mr. Parker failed to mention that he had personally ordered the preemption of home shopping programming and the broadcast, in its place, of Dr. Eugene Scott's religious program. *See* Tr. 1719-1720. According to Mr. Bendetti, the station was not paid for the broadcast of Scott's program, *and* the station received "a lot" of complaints about that program. Tr. 1722-1723. Mr. Bendetti brought these considerations to Mr. Parker's attention, but Mr. Parker nonetheless insisted that the station continue to broadcast the Dr. Scott program. Tr. 1722-1723.

46. Mr. Parker also stated that

the organizations we served with our PSAs were better served with PSAs than if we had given them a half hour program.

Tr. 850. The basis for this view was said to be Mr. Parker's "experience". *Id.*

^{19/} Two of the interviewees, Mr. McCracken and Judge Rose, were nominated by Parker to serve as RBI directors in October, 1991. *See, e.g.,* Adams Exh. 13, pp. 38-73.

47. In his direct written testimony offered at hearing, Mr. Parker stated that it was his "judgment that the market served by WTVE would not support program-length newscasts on WTVE". RBI Exh. 5, pp. 1-2. However, at a shareholders' meeting held on August 1, 1989, Mr. Parker "advised the Shareholders that it was his plan to reintroduce the news by December of 1989 and basically set up a news chain by using local cable companies as volunteer news gatherers." Adams Exh. 13, p. 3. According to Mr. Bendetti, Program Director of Station WTVE(TV) during the license term, in 1989 Mr. Parker ordered the station's staff to prepare a mock newscast for presentation to the shareholders, and the staff did prepare and present such a newscast to an RBI shareholders' meeting. Tr. 1747-1749.

48. No newscast along the lines discussed in 1989 ever materialized. However, during an April 3, 1990 meeting of the RBI Board of Directors (all of whom, at the time, were RBI shareholders, with the exception of Mr. Parker), Mr. Parker

mentioned . . . that the cable news network in Atlanta would like the station to sign on as a news affiliate for their news service. He also indicated that they would help us set up our own local news program.

Adams Exh. 14, p. 48. At a Directors' meeting held on April 14, 1991, Mr. Parker stated that news considerations were "very important" and that he would "want to schedule a meeting with George Case from CNN to pursue news as a part of what is offered." Adams Exh. 15, p. 40.

49. Further discussions concerning news programming occurred throughout the license term. The minutes of a Directors' meeting on May 8, 1990, indicate that Mr. Parker there "discussed the analysis of the staff of the Corporation is [sic] that

bringing back local news will not work." Adams Exh. 14, pp. 64-65. But those minutes indicate that "Dr. Aurandt then claimed that the local news was always successful on a financial basis for the Corporation." Adams Exh. 14, pp. 64-65. The minutes of a Shareholders' meeting held six months later, on November 7, 1990, indicate without elaboration that "there was a discussion about adding news and doing more Public Service Announcements." In February, 1994, George Mattmiller advised RBI shareholders that "discussions are underway to bring back news segments during the five-minute breaks, leading to a possible 1/2-hour daily newscast." Adams Exh. 13, p. 134.

50. The evidence does not indicate that any locally-produced, locally-oriented news programming was provided on Station WTVE(TV) during the 1989-1994 license term.^{20/} The station did air PSA's entitled "News To You" during the license term. Those were logged by the station at the time of broadcast as "PSA", *i.e.*, public service announcement, *e.g.*, Adams Exh. 6, pp. 42, 44-45, 58-63, 98, 101; Adams Exh. 7, pp. 8-9, 11, 26, 31, 55, 83, 102, 124, 130-131, 145, 148, indicating that the station did not deem them to be news programming.

51. Mr. Bendetti described the manner in which "News To You" and other

^{20/} The only news programming arguably reflected in the record was aired in 1989. Adams's review of the program logs of Station WTVE(TV) revealed a number of entries denoted as "NF". See Adams Exh. 2, Supplemental Attachment to Appendix A. Based on information included in other materials provided by RBI, Adams understands the legend "NF" to refer to "news feature". Tr. 1226. Two of the six "NF" entries shown on the October 1, 1989 log, which was included in Adams's composite week analysis, ran 120 seconds long ("Flat Tire Remedy", which was aired twice that day, and "Improving Food Supply"); two ran 150 seconds long ("Recycling Yard Waste" and "Fashionable Flower Bulbs"); and one ran 180 seconds long ("Tips for Great Looking Hair"). See Adams Exh. 3, pp. 3-16 (program log for October 1, 1989).

similar PSA's (e.g., "Elderly Report", "Kid's Korner") were produced:

These were satellite feeds that used to come over satellites. We would record them. News services use them all the time. Regular news stations record these national stories.

Just to give you an example. Let's say there's an 80 year old guy that's still a baseball coach for Little Leagues. He's 80 years old. And we might get a fax in that says, hey, that's kind of a nice story, let's record that. We would record it and then we'd put a little text on the front of it. In the background it would say news to you, or the elderly report. And we would go to the story.

And then at the end, we'd put copyright WTVE TV 51. And then we would run that and we would claim that as our public service. And it was nice 'cause we didn't have to haul in a crew, we didn't have to go out and shoot anything. We could just pull the stuff off the satellite and then just leave it for like a master control operator working that night to put a little beginning to it and a little end to it. And it comes across, looks like we made it.

Tr. 1709. The "News To You" and other similar PSA's were not locally-produced "news" programming, but rather satellite-fed public service announcements whose substantive content was controlled by third parties.

52. According to Mr. Bendetti, during the relevant license term Mr. Bendetti approached Mr. Parker on a number of occasions with proposals for programming which would "help us with our public service." Tr. 1713. Mr. Parker rejected all of those proposals. *id.* Further, Mr. Bendetti testified that, pursuant to Mr. Parker's direction, the station aired only "minimum public service", Tr. 1678, and that Mr. Parker ordered the termination of programming efforts which entailed the use of station resources. ^{21/}

^{21/} With respect to the "In Touch" program which was originally taped in the WTVE(TV) studio, Mr. Bendetti stated that "Mr. Parker asked us to stop doing those for reasons that had to do with us having to pull together a crew in order to be able to go in
(continued...)

(d2) **Mr. Linton**

53. Other than the reference to Mr. Parker's conversation with Mr. Linton which is reflected in the "Community Ascertainment" page (Adams Exh. 17, p. 271) described in Paragraph 43 above, the record contains no evidence of any involvement by Mr. Linton in the public service programming of Station WTVE(TV) during the license term.

(d3) **Dr. Tietbohl**

54. The record contains only one indication of any particular involvement on the part of Dr. Tietbohl in public service programming-related matters during the license term. At a meeting of RBI's shareholders held on February 1, 1994, Dr. Tietbohl inquired as to "what the station plans to do in the event of an emergency, such as the earthquakes of Saturday evening, January 15, 1994." Adams Exh. 13, p. 134. Two earthquakes had struck Reading on Saturday, January 15. See Adams Exh. 2, pp. 36-38; Adams Exh. 44, pp. 17-21; Tr. 1738-1741. According to John Loos, the Emergency Management Coordinator for Berks County, one of the quakes was the "largest ever in the area and one of the largest on the east coast", Adams Exh. 44, p. 18, causing "extensive property damage" to "hundreds and hundreds of homes", Adams Exh. 44, pp. 32-33.

^{21/}(...continued)

and tape these things." Tr. 1678. Similarly, according to Mr. Bendetti, "most of the public service efforts that we were doing at the time, Mike Parker did not want us to take those on." Tr. 1679. See also, e.g., Tr. 1683 ("I wasn't a part of any meetings where any type of those mandates were laid down by Mike Parker that public service was primary concern. It was quite the opposite.")

55. Two weeks after the earthquake, at the February 1, 1994 RBI shareholders' meeting, Dr. Tietbohl inquired "what could be done in regards to disseminating information" about such emergencies. Adams Exh. 13, p. 134. ^{22/} In response, George Mattmiller, a member of the station's management,

explained that the station had no way of going "live" with cut-ins, but did say discussions are underway to bring back news segments during the five-minute breaks, leading to a possible 1/2-hour daily newscast. For the time being, efforts are underway to contact Mr. John Loos at the Disaster Relief Center to determine ways to most effectively inform WTVE's viewers about impending disasters.

Adams Exh. 13, p. 134.

56. At the hearing, Mr. Bendetti, the station's Program Director and Station Manager at the time of the earthquake, echoed those statements:

George [Mattmiller] was upset that here we are, the only TV station in Reading, and we can't even -- I mean, how often does an earthquake happen and we can't even let the viewers know.

And he set up -- he tried to set up a process with the -- after this earthquake, he tried to set up a process with the emergency bureau in Berk's County with -- . . . with Mr. Loose Jones, or something. George wanted to have some sort of communications going forward if something like this were to ever happen again.

Tr. 1740-1741.

57. Mr. Loos confirmed that, at some point either at approximately the time of the 1994 earthquake or at the time of a blizzard in 1996, he was contacted by a representative of the station about possibly "doing short spots on public safety". Adams Exh. 44, p. 22. However, because of scheduling difficulties, no such "short spots" were

^{22/} As indicated in Paragraph 33, above, Dr. Tietbohl was involved in an effort to provide "coverage for weekend and holidays to cover emergencies."

ever shot with Mr. Loos. Adams Exh. 44, p. 23.

58. Mr. Loos also testified that during emergencies, it is not uncommon for broadcast stations to contact his office to obtain information. Adams Exh. 44, p. 10. However, the only contact that Mr. Loos recalled ever having from Station WTVE(TV) involved the conversations concerning the possibility, ultimately abandoned, of preparing some "short spots on public safety", Adams Exh. 44, p. 28.

59. Other than his expression of concern at the February 1, 1994 shareholders' meeting, the record contains no indication that Dr. Tietbohl sought to involve himself in the station's public service programming.

60. With the limited exceptions described above in Paragraphs 37-59, the record contains no evidence that any of the RBI shareholders who lived (whether part-time or full-time) within the station's service area during the license term had any influence or impact on the station's programming during the license term.